

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ANTHONY LEON JOHNSON,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 1:08-CV-1960 AWI
(No. 1:03-CR-5053 AWI)
**ORDER ON PETITIONER'S
REQUEST FOR RELIEF UNDER
28 U.S.C. § 2255**
(Doc. Nos. 71 & 73)

Petitioner filed a direct appeal with the Ninth Circuit and the Ninth Circuit affirmed the conviction. See Court's Crim. Docket Doc. No. 68. Petitioner later filed this 28 U.S.C. § 2255 motion on December 22, 2008. See id. at Doc. No. 71. On January 16, 2009, the Ninth Circuit recalled its mandate for the purpose of allowing Petitioner to file a motion for rehearing. See id. at Doc. No. 72. On February 27, 2009, Petitioner filed what the Court construes as an amendment to his Sec. 2255 petition. See id. at Doc. No. 73. However, "a district court lacks authority to entertain a habeas corpus petition while direct review is pending." United States v. Colvin, 204 F.3d 1221, 1226 (9th Cir. 2000) (describing Feldman v. Henman, 815 F.2d 1318, 1320-21 (9th Cir. 1987)); see also United States v. Lafromboise, 427 F.3d 680, 686 (9th Cir. 2005); United States v. Pirro, 104 F.3d 297, 298 (9th Cir. 1997). In light of the Ninth Circuit recalling mandate, Petitioner's appeal is still pending. Thus, this petition is premature and the Court will not consider it at this time.

Accordingly, IT IS HEREBY ORDERED that Petitioner's 28 U.S.C. § 2255 is DENIED without prejudice as premature and the Clerk is to CLOSE this case.

IT IS SO ORDERED.

Dated: March 5, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE